

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

DAVIDSON SURFACE/AIR, INC.,

Plaintiff,

vs.

ZURICH AMERICAN INSURANCE
COMPANY d/b/a ZURICH,

Defendant.

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Cause Number: 4:22-cv-00547

NOTICE OF REMOVAL

Defendant, Zurich American Insurance Company (“Zurich”) files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and in support hereof states:

Nature of the Action

1. The removed case is a civil action filed on February 7, 2022, in the Circuit Court of St. Louis County, Missouri, styled *Davidson Surface/Air, Inc. vs. Zurich American Insurance Company d/b/a Zurich*, cause number 22SL-CC00855 (the “State Court Action”).

2. The State Court Action involves claims made by Davidson Surface/Air, Inc. (“Davidson”) against Zurich seeking insurance coverage for loss or damage to property caused by weather-related events.

Timely Filed

3. Zurich received Davidson’s Petition in the State Court Action on April 20, 2022.

4. This Notice of Removal is timely pursuant to 28 U.S.C. §1446(b) as it is filed within 30 days after the receipt by Zurich of a copy of the initial pleading setting forth the claim for relief upon which this action is based.

Grounds for Removal

5. The United States District Court for the Eastern District of Missouri has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because this is a civil action in which the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest, and is between citizens of different states.

Diversity of Citizenship

6. Davidson is a corporation incorporated in the state of Missouri and has its principal place of business in Missouri. Davidson is therefore a citizen of the state of Missouri.

7. Zurich is a corporation incorporated in the state of New York and has its principal place of business in Illinois. Zurich is therefore a citizen of the states of New York and Illinois. Zurich is not a citizen of the state of Missouri.

8. There is complete diversity of citizenship between the parties.

Amount in Controversy

9. Plaintiff's Petition in the State Court Action does not expressly allege an amount of damages except to state that damages exceed \$25,000. However, at issue in this litigation is alleged hail damage to the roof of a large commercial warehouse facility located at 1 Corporate Woods Drive in Bridgeton, Missouri, and a claim for resulting water intrusion and damage. A Google Maps aerial image of the building is below:



Upon information and belief, Plaintiff's claim in this lawsuit is for the cost to replace the 330,000 square foot roof, among other items of damage. Further, Plaintiff claims, in Count I of the Petition, a right to recover attorney's fees. A claim for attorney's fees may be considered in determining whether the requisite amount in controversy is met. *See Capitol Indemnity Corporation v. Miles*, 978 F.2d 437, 438 (8th Cir. 1992). The amount in controversy therefore exceeds \$75,000, exclusive of interest and costs.

State Court Proceeding

10. Pursuant to Rule 2.03 of the Local Rules of the United States District Court for the Eastern District of Missouri, a copy of all process, pleadings, orders and other documents on file in the state court, together with a copy of the state court's docket sheet, are attached hereto.

Notice of Filing

11. A Notice of Filing of this Notice of Removal was filed with the Clerk of the Circuit Court of St. Louis County, Missouri and mailed to the Plaintiff, through counsel.

12. This Notice of Removal is made pursuant to Rule 11 of the Federal Rules of Civil Procedure.

Jury Demand

13. Zurich requests that this matter be tried by a jury.

WHEREFORE, Defendant, Zurich American Insurance Company, respectfully requests that this action now pending in the Circuit Court of St. Louis County, Missouri be removed to the United States District Court for the Eastern District of Missouri, that this Court accept jurisdiction of this action, and that this action be placed upon the docket of this Court for further proceedings as though this action were originally filed in this Court.

Respectfully Submitted,

GALLOWAY, JOHNSON, TOMPKINS,
BURR & SMITH, A PLC

/s/ Stephen J. Moore

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Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served electronically via operation of the Court's CM/ECF system to all counsel of record, this 20th day of May 2022.

/s/ Stephen J. Moore
